

*Emergency Response
Training: Preparing Michigan Courts for a Public Health
Emergency In the Age of Terrorism & Emergency Threats*

Welcoming Remarks

Honorable Clifford W. Taylor
Michigan Supreme Court

Mr. Michael Cox
Attorney General
Department of Attorney General

Ms. Janet Olszewski
Director
Michigan Department of Community Health



Authority and Actions Under the Public Health Code to Prevent and Control the Spread of Disease

Presented by:
Denise Chrysler, Director
Office of Legal Affairs
Michigan Department of Community Health

Protection of the public's health

“The public health and general welfare of
the people of the state are hereby declared
to be matters of primary public concern.
The legislature shall pass suitable laws for
the protection and promotion of the public
health.”

Const 1963, art 4, § 51

Michigan Department of Community Health

“Pursuant to section 51 of article 4 of the state constitution of 1963, the department [of community health] shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including ... prevention and control of diseases...”

MCL 333.2221(1)

Michigan Public Health Code

“... shall be liberally construed for the protection of the health, safety, and welfare of the people of this state.”

MCL 333.1111(2)

Powers of Director of Michigan Department of Community Health

If the Director determines that conditions anywhere in this state constitute a menace to the public health, she is authorized to take full charge of the administration of applicable state and local health laws, rules, regulations, and ordinances

MCL 333.2251(3)

Director's Powers

Imminent Danger Order

“Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order The order shall incorporate the director's findings and require immediate action necessary to avoid, correct, or remove the imminent danger.”

MCL 333.2251(1)

Powers of Local Health Officer

- **The Director of the Department of Community Health has statewide jurisdiction.**
- **Under Part 24 of the Public Health Code, local health officers have most of the powers granted to the Director to respond to public health emergencies within the area served by the local health department**
- **For example, MCL 333.2451 authorizes local health officers to issue imminent danger orders within the local health department's jurisdiction**

Director's Powers

Emergency Order to Control Epidemic

“If the director [or local health officer] determines that control of an epidemic is necessary to protect the public health, the director, by emergency order, may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.”

MCL 333.2253; MCL 333.2453

Violation of Director's Orders

- A person who violates a rule or order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200, or both. MCL 333.2261
- An individual may be arrested if violation occurs in the presence of a police officer, or the police officer has reasonable cause to believe individual has violated a rule or order. MCL 764.15(1)

Director's Powers

Warning Notice Against Carrier of Disease

- Allows director or local health officer who determines "that an individual is a carrier and is a health threat to others" to issue a warning notice requiring person to cooperate in preventing or controlling transmission of disease.
- Must inform the individual that if he or she fails to comply with the warning notice, the health department shall seek a court order
- Must also inform the individual that, except in an emergency, the individual will have a right to a hearing before the court issues its order

MCL 333.5203

Director's Powers

Petition Court for Order Against Carrier

"If a department representative or a local health officer knows or has reasonable grounds to believe that an individual has failed or refused to comply with a warning notice issued under section 5203, the department or local health department may petition the circuit court for the county of Ingham or for the county served by the local health department for an order..."

MCL 333.5205(1)

Director's Powers

Emergency Action Against Carrier

“To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention.”

MCL 333.5207(1)

Department's Powers

Inspection or Investigation

- State and local health departments are authorized to inspect or investigate:
 - **A suspected outbreak or exposure**
 - **Any matter, thing, premises, place, person, record, vehicle, incident, or event**

MCL 333.2221(2)(d), MCL 333.2241(1), MCL 333.2433(2)(c), MCL 333.2446

Department's Powers

Inspection or Investigation

State and local health investigators are to be provided with medical and epidemiological information pertaining to individuals who have, are suspected of having, or may have been exposed to a disease or condition of public health significance

Communicable Disease Rules, R 325.174(2)

Department's Powers

Inspection or Investigation

“[The communicable disease rule] which requires that personal medical information of an individual with a disease shall be provided to an investigator of the Michigan Department of [Community] Health or a local health department, is within the statutory authority granted to the Department of [Community] Health by the Public Health Code to make investigations of reported cases of diseases.”

Op Atty Gen 1986, No 6376, p 336

Department's Responsibilities

to protect private health information

“Medical and epidemiological information which identifies an individual and which is gathered in connection with an investigation **is confidential and is not open to public inspection** without the individual's consent or the consent of the individual's guardian, **unless public inspection is necessary to protect the public health as determined by a local health officer or the director.**”

Communicable Disease Rules, R 325.181(2)

Director's Powers

Maintain Court Actions

- To compel compliance with Imminent Danger Order
- To compel compliance with Emergency Order to Control Epidemic
- To obtain warrant to inspect or investigate and to seize property
- To obtain an injunction

Director's Powers

Maintain court action to obtain warrant to inspect or investigate and to seize property

- Application for warrant may be filed by State or Local Health Department
- Issued by Magistrate based on facts stated in affidavit
- May authorize property to be seized
- May direct law enforcement to assist health department in inspection or investigation

MCL 333.2241-2247, MCL 333.2446

Director's Powers

Maintain Court Action for Injunction

- State Health Director or Local Health Director may maintain action
- May seek court order to restrain, prevent, or correct:
 - A violation of a law, rule or order that health department has duty to enforce
 - An activity or condition that health department believes adversely affects the public health

MCL 333. 2265, MCL 333.2465

Director's Powers

Quarantine, Isolation, & Immunization

Police Power

- The power of government to impose restrictions on private rights for the sake of the public welfare, order, and security
- Subject to constitutional limitations, especially to the requirement of due process and right to equal protection

Director's Powers

Quarantine, Isolation, & Immunization

- *Compagnie Francaise De Navigation A Vapeur*, 186 US 380 (1902)
- *Jacobson v Massachusetts*, 197 US 11 (1904)
- *Rock v Carney*, 216 Mich 280 (1921)

Quarantine

Campagne Francaise de Navigation a Vapeur v Louisiana State Board of Health,
186 US 380 (1902)

Quarantine held to be:

- Legitimate exercise of police power
- No violation of Commerce Clause

Immunization

Jacobson v Massachusetts, 197 US 11 (1905)

- Involved mandatory vaccinations, not quarantine.
- Based on earlier quarantine decisions, valid exercise of state's police power.
- Expressly recognized power of local administrative agencies to develop and implement health regulations.

Jacobson v Massachusetts

“The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right to each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good”

Quarantine & Isolation

Rock v Carney, 216 Mich 280 (1921):

- Plaintiff quarantined by local authorities for 12 weeks. Lower court upheld exercise of police power.
- Supreme Court reversed, but recognized:
“That the power exists in the boards of health acting through their respective health officers to quarantine persons infected with these diseases either in their homes or in detention hospitals, such detention to continue so long as the diseases are in their infectious state . . .”

Quarantine & Isolation

Rock v Carney, continued

“When sufficient reasonable cause exists to believe that a person is afflicted with a quarantinable disease, there is no doubt of the right of the health authorities to examine into the case . . . remembering that the persons so affected are to be treated as patients, and not as criminals.”

Thank you for your attention.

Denise Chrysler
(517) 373-2109
Chryslerd@michigan.gov



**The Legal Implications of
Emergency Response: The
Authority and Liability of First
Responders**

MIKE COX

ATTORNEY GENERAL

Presented by:

A. Michael Leffler

Assistant Attorney General



Department of
Attorney General

I. Introduction

- ✓ **Surprising lack of information relating to the legal issues implicated in first response and this is particularly true in the terrorism context.**
- ✓ **30-minute survey of the area.**
- ✓ **We will identify some basic principles and give you a better understanding of what's going on legally when the government is engaged in emergency response generally and in response to terrorist events in particular.**

Overview of Federal/State Relationship in a WMD Event

I. Crisis Management vs Consequence Management

**Presidential Decision Directive-39
"United States Policy on
Counterterrorism" June 21, 1995**

A. Crisis Management is primarily a law enforcement response involving "measures to identify, acquire and plan the use of resources needed to anticipate, prevent and/or resolve a threat or act of terrorism." Federal government has lead.

Overview (*continued*)

B. Consequence Management includes "measures to protect public health and safety, restore essential government services and provide emergency relief to governments, businesses and individuals affected by the consequences of terrorism."

C. States have primary authority and responsibility for managing the consequences of terrorism (or any other emergency).

Consequence Management

Federal Government can provide assistance if required.

PDD39: This Presidential Decision Directive identifies primary and support functions for crisis and consequence management in a domestic terrorist incident. Roles and responsibilities of the key Departments/Agencies are listed below.

Department of Defense	Support: Activates specialized response capabilities to support the civil response; coordinates military mobilization with the appropriate civil agencies.
Department of Energy	Support: Activates specialized response capabilities to support the civil response; interfaces, coordinates, and provides technical assistance per agreements signed pursuant to the FRERP.
FEMA/Dept of Homeland Security	Lead agency for consequence management; Determine in consultation with Governor and the White House if a Federal consequence management response is required. Support: Support DOJ until the Attorney General transfers lead federal agency role to DHS.
Health & Human Services	Support: Activates specialized response capabilities to support the civil response; use the structure, relationships, and capabilities described in the HHS Health & Medical Services support Plan for the Federal Response to Acts of Chemical/Biological (C/B) Terrorism to support response operations of individual agencies.

Consequence Management (cont)

Department of Justice	Lead agency for response to threats or acts of terrorism within U.S. territory.
Federal Bureau of Investigation	Lead for crisis management operational response to threats or acts of terrorism within the United States and in international waters when a foreign-flagged vessel is not involved; law enforcement lead in overseas incidents involving U.S. persons or property; on-scene manager until delegated to DHS. Support: to the lead federal agency by operating as the lead for crisis management.
Environmental Protection Agency	Support: Activates specialized response capabilities to support the response. Coordinate with other agencies to use the structure, relationships, and capabilities of the National Response System described in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to support response operations.
Department of State	Lead: International terrorist incidents that take place outside U.S. territory, and not on U.S. flag vessels or in international water; Leads and manages the Foreign Emergency Support Team.

Executive Order 12656 Establishes Roles and Responsibilities during a National Security Emergency

This Executive Order identifies primary and support functions to be performed during any national security emergency of the United States, development of plans for performing these functions, and development of the capability to execute those plans. Some of the roles and responsibilities of the affected departments/agencies are listed below.

Dept of Agriculture	Continuation of agricultural production, food processing, storage, and distribution; forest products; fires in rural areas; forestry and agricultural services, including control of diagnosis and control of diseases, pests, or biological, chemical, or radiological agents; livestock and poultry or their products; agricultural commodities and land exposed to or affected by hazardous agents. Support: Assist Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical agricultural materials.
---------------------	---

Executive Order 12656

Dept of Defense	Military response; national mobilization; damage assessment; support to civil and private sector, including law enforcement within authority; respond to all hazards related to nuclear weapons, materials, and devices; through the Secretary of the Army, manage and allocate all usable waters within U.S. jurisdiction; stockpile of storage and critical materials. Support: civil and military national mobilization.
Dept of Energy	Identify, analyze, assess, and mitigate hazards from nuclear weapons, materials, and devices; all emergency response activities pertaining to DOE nuclear facilities. Support: advise, assist, and assess the radiological impact associated with national security emergencies.
Dept of Health & Human Services	Mobilize health industry and resources to provide health, mental health, and medical services; allocate health, mental health, and medical services' resources among civilian and military claimants; reduce or eliminate adverse health and mental health effects produced by hazardous agents (biological, chemical, or radiological); minimize property and environmental damage; emergency human services, e.g., feeding, registration and inquiry, social services, family reunification, mortuary services and interment. Support: agricultural health services.

Executive Order 12656

Dept of Home-Land Security	Primary: Advise National Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate. Coordinate with the other Federal departments and agencies and with State and local government to implement national security emergency preparedness policy. Support: preparing plans and programs, to include plans and capabilities for related to nuclear emergencies; promote programs for Federal buildings and installations.
Dept of Justice	Interdict and respond to terrorism incidents in the United States; advise the President and departments/agencies regarding national security emergency powers, plans, and authorities; coordinate Federal Government domestic law enforcement activities related to national security emergency preparedness, respond to civil disturbances that may result in a national security emergency. Support: the intelligence community in the planning of its counter-intelligence and counter-terrorism programs.
Dept of Transportation	Meet essential transportation needs; provide direction to all modes of civil transportation; control civil transportation resources and systems; coordinate with State and local highway agencies in the management of all publicly owned or other highways, roads, streets, bridges, tunnels; maritime and port control, safety, law enforcement and security. Support: Energy to manage transportation resources involved in the bulk movement of energy materials; Federal departments/agencies, State and local governments, the private sector in developing plans to protect essential resources and facilities.

Other Federal Sources of Assistance

- 1. The Stafford Act**
 - **State Governor can request support by asking President to declare a disaster or emergency.**
- 2. The Defense Against Weapons of Mass Destruction Act**
 - Coordination of federal with state agencies.**
- 3. The Homeland Security Act of 2002**
 - A. Created Department of Homeland Security (DHS)**
 - 1. Consolidated 22 existing federal entities.**
 - 2. Mission: preventing terrorist attacks, reducing vulnerability to terrorism, mitigating damage and assisting in recovery from terrorist attacks.**
 - B. Designates DHS as lead agency for coordinating disaster and emergency response and recovery assistance with state**

Relevant Statutes & Regulations to WMD Response

Executive Order 12196	Federal Agencies	Relates to uniquely military operations
Executive Order 12241	Federal Agencies	Assigns responsibilities for responding to radiological emergencies
Executive Order 12580	Federal Agencies	Assigns responsibilities for responding to releases of hazardous substances
Executive Order 12656	Federal Agencies	Assigns emergency preparedness responsibilities to Federal agencies
Executive Order 12777	Federal Agencies	Assigns responsibilities for responding to discharge of oil
Executive Order 13228	White House, Federal Agencies	Establishes the Office of Homeland Security
Executive Order 13284	Various Federal Agencies	Amends various Presidential documents to reflect the responsibilities of the Secretary of Homeland Security
Executive Order 13286	Federal Agencies	Amends Executive Orders to take account of the creation of the Department of Homeland Security, among other things

Relevant Statutes & Regulations to WMD Response *(continued)*

PDD-39	Federal Agencies	Sets out United States counter-terrorism policy and crisis and consequence management functions
PDD-62	Federal Agencies	Sets out policy and systematic approach to countering terrorism; establishes the office of the National Coordinator for Security, Infrastructure Protection and Counter-Terrorism
HSPD-1	White House	Created the Office of Homeland Security
HSPD-3	Federal Agencies	Created the Homeland Security Advisory System
HSPD-5, Management of Domestic Incidents	Federal Agencies	Requires development of the National Response Plan and the National Incident Management System.
U.S. CODE 10 USC 331 et seq	President, DoD, States	Authorizes the calling into Federal service and use of the militia to, among other things, quell insurrection and enforce federal authority
10 USC 371 et seq	Department of Defense	Allows participation of DoD personnel in law enforcement activities in specified circumstances
18 USC 831	Departments of Justice, Defense	Criminalizes certain acts involving nuclear material and authorizes the Attorney General to request DoD assistance to enforce the section

Relevant Statutes & Regulations to WMD Response *(continued)*

U.S. Code

18 USC 921	Department of Treasury, DoD, individuals	Defines "destructive device"
18 USC 1385	DoD	Prohibits the use of the military to execute the laws
18 USC 2332a	Department of Justice, individuals	Criminalizes terrorism and defines "weapons of mass destruction"
Clean Water Act, 33 USC 1251 et seq	Executive	33 USC 1321(d) and CERCLA, 42 USC 9605(a) authorize the President to develop a National Contingency Plan 33 USC 1321(c) authorizes the President to respond to discharges of oil
42 USC 5121 et seq	Local, State, Federal	Identifies roles, responsibilities in emergencies and major disasters requiring Federal assistance
CERCLA, 42 USC 9601 et seq	Executive	Authorizes the President to respond to releases of hazardous substances

Relevant Statutes & Regulations to WMD Response *(continued)*

42 USC 10501 et seq	State, Federal law enforcement agencies	Justice Assistance Act, authorizing Federal law enforcement assistance to States, upon written request from States
50 USC Chapter 40	State, Federal, local entities	Various measures to manage the proliferation of and the domestic threat posed by WMD
Pub L 107-296, codified at 6 USC 101 et seq	Department of Homeland Security, States, private sector	Creates the Department of Homeland Security; other measures for the protection of the homeland
Pub L 107-314	Department of Defense	Mandates creation of the Assistant Secretary of Defense for Homeland Defense
Code of Federal Regulations 28 CFR 0.85	Department of Justice, individuals	Defines terrorism, among other things
28 CFR 65	State, Federal, Local law enforcement agencies	Implements the Justice Assistance Act
44 CFR 206	Local, State, Federal	Implementing regulations for the Stafford Act

Relevant Statutes & Regulations to WMD Response *(continued)*

Agency Directives/Instructions/Manuals

DoDD 3025.1	DoD, State and Federal authorities	Sets out policy and responsibilities regarding military support to civil authorities (MSCA)
DoDD 3025.1-M	DoD, State and Federal authorities	Manual of procedures to render military support to civil authorities
DoDD 3025.12	DoD, State and Federal authorities	Sets out policy and responsibilities for military assistance for civil disturbances (MACDIS)
DoDD 3025.15	DoD, State and Federal authorities	Sets out policy and procedures regarding military assistance to civil authorities (MACA)
DoDD 5525.5	DoD, State and Federal law enforcement authorities	Sets out policy and responsibilities for military cooperation with civilian law enforcement agencies (MSCLEA)
Federal Response Plan, Interim, 2003	Federal Agencies, States	Implements the Stafford Act; Federal Government structure and concept of operations for responding to major disasters and emergencies

Relevant Statutes & Regulations to WMD Response *(continued)*

Federal Plans

National Contingency Plan	Federal Agencies, States	Plan to manage domestic emergencies involving hazardous substances and oil spills
FRERP	Federal Agencies, States	Plan to manage domestic radiological emergencies
WMD Incident Contingency Plan	Federal Agencies, States	FBI's plan for crisis management in the event of domestic terrorist incidents
Health & Medical Services Support Plan for the Federal Response to Acts of Chemical/Biological Terrorism	Federal Agencies, States	HHS plan for health and medical response in the event of terrorist acts involving chemical or biological agents
GARDEN PLOT	Department of Defense	Procedures for coordinating DoD and DOJ assistance in civil disturbances, under 10 USC 331-333
Initial National Response Plan	Federal Agencies	Begins process of integrating all Federal, response, recovery, and preparedness plans into one all-hazards plan

DEFENSE THREAT REDUCTION AGENCY "Domestic WMD Incident Management Legal Deskbook"

Website:

http://www.dtra.mil/press_resources/publications/deskbook/index.cfm



II. Authority vs. Liability

Authority: Do I have the legal right to do the things I must do in response to an emergency?

Liability: What happens to my organization or me if my conduct responding to an emergency results in personal injury or property damage?

“The King can do no wrong” (liability question will implicate broad issues of sovereign and governmental immunity that date back hundreds of years)

III. Three Tiers of Authority

Generally there are three sources of the government’s legal authority and each has a corresponding liability scheme.

- 
- A. Emergency Powers
 - B. Codes & Other Statutory Powers
 - C. Common Law Powers and Tort Liability

IV. Emergency Powers

A. Emergency powers are usually found in state or federal **Emergency Management Statutes** and are intended to maximize the Government’s ability to respond to natural or man-made emergencies

Emergency Powers are the gold standard when it comes to emergency response, both in terms of the authority they provide, and the protection from liability they offer.

Emergency Powers, cont'd

B. Michigan Emergency Management Act

MCL 30.401 *et seq*:

Sec. 5. (1) In addition to the general authority granted to the governor by this act, the governor may, upon the declaration of a state of disaster or a state of emergency [or in the event of acts or threats of terrorism, a "heightened state of alert"] do 1 or more of the following:

- (a) Suspend a regulatory statute, order, or rule prescribing the procedures for conduct of state business . . . ('03' Blackout – gas formulations)

Michigan Emergency Management Act, (MCL 30.401 *et seq*), *cont'd*:

(c) Transfer the direction, personnel, or functions of state departments, agencies, or units thereof for the purpose of performing or facilitating emergency management.

(d) [C]ommandeer or utilize private property necessary to cope with the disaster or emergency.

(e) Direct and compel the evacuation of all or part of the population from a stricken or threatened area. . .

Michigan Emergency Management Act, (MCL 30.401 *et seq*), *cont'd*:

* * *

(g) Control ingress and egress to and from a stricken or threatened area, removal of persons within the area, and the occupancy of premises within the area.

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

(2) A person who willfully disobeys or interferes with the implementation of a rule, order, or directive issued by the governor pursuant to this section is guilty of misdemeanor. (MCL 30.405)

The Governor as Commander-in Chief: MCL 32.551

Governor's authority over the Nat'l Guard

(MCL 32.579)

(1) Only the Governor may command state military personnel.**

(2) If any portion of the organized militia is called into active service, or the service of the United States to execute the laws, engage in disaster relief, suppress or prevent actual or threatened riot or insurrection, repel invasion, respond to acts or threats of terrorism or safeguard military or other vital resources of this state or of the United States, . . . a commanding officer shall use his or her own judgment in apprehending or dispersing a sniper, a rioter, a mob, or an unlawful assembly.

Emergency Management Act, *cont'd*

Liability protection is similarly powerful:

(3) This state or a political subdivision of this state engaged in disaster relief activity is not liable for the death of or injury to a person or persons, or for damage to property, as a result of that activity. The employees, agents, or representatives of this state . . . and private or volunteer personnel engaged in disaster relief activity are immune from tort liability to the extent provided under section 7 of 1964 PA 170, MCL 691.1407. . . . MCL 30.411(3)

Michigan Emergency Management Act,

(MCL 30.401 *et seq*) *cont'd*

Special attention for emergency medical personnel

(4) A . . . paramedical person, whether licensed in this or another state or by the federal government or a branch of the armed forces of the United States, . . . that renders services during a state of disaster declared by the governor and at the express or implied request of a state official . . . is considered an authorized disaster relief worker or facility and is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained. MCL 30.411(4)

Michigan Emergency Management Act,
(MCL 30.401 *et seq*) *cont'd*

Special attention for emergency medical personnel

(5) A . . . licensed paramedical person, . . . during a state of disaster declared by the governor, may practice, in addition to the authority granted by other statutes of this state, the administration of anesthetics; minor surgery; intravenous, subcutaneous, or intramuscular procedure; or oral and topical medication; or a combination of these under the supervision of a member of the medical staff of a licensed hospital of this state, and may assist the staff member in other medical and surgical proceedings. MCL 30.411(5)

National Guard members receive broad authority and liability protection also

That commanding officer shall determine the amount and kind of force to be used in preserving the peace and carrying out the orders of the governor. Except as provided in subsection (3), that commanding officer's honest and reasonable judgment under the circumstances then existing, in the exercise of his or her duty, is full protection, civilly and criminally, for an act done in the line of duty, and a member of the organized militia in active service, active state service, or the service of the United States is not liable civilly or criminally for an act committed by him or her in the performance of his or her duty.MCL 32.579(2)

May even get Legal Representation by the Attorney General

(4) The attorney general of this state shall defend a civil action or criminal prosecution brought in a state or federal court, against a member of the organized militia or his or her estate, arising from an act or omission alleged to have been committed while in active service, active state service, or the service of the United States. MCL 32.579(4)



"Everyone's got a plan until they get hit."



**-Attributed to
Mike Tyson**

V. Codes & Other Statutory Powers: Authority

A. One level down from Statutes authorizing the exercise of Emergency Powers are a whole series of other state and federal statutes which collectively authorize government employees to act and define what liability protections, if any, they will enjoy when they do.

V. Codes & Other Statutory Powers Codes of Criminal Procedure, Health Codes and Environmental Response and Cleanup Statutes

These laws will set out the procedures for securing warrants to detain and/or arrest persons, to investigate crimes or threats to public health or the environment, to search for and seize evidence, or remediate a site where a hazardous substance has been discharged:

V. Codes & Other Statutory Powers

Warrant & Inspection Authority

Conventional Law Enforcement Authority:

Any site of a suspected bioterrorist incident will almost certainly qualify as a crime scene and, as a result, various well established principles of criminal procedure will apply.

"Plain View", "Open Fields", "Consent," "Exigent Circumstances" and "Abandoned Property" doctrines may well allow peace officers to secure the scene of a bioterrorist event to prevent the destruction of evidence or even to inspect the scene itself without a warrant

A police officer may enter a dwelling without a warrant where it is reasonably believed that a person inside is in need of medical assistance. ("Emergency Circumstances Exception")

[*City of Troy v Ohlinger*, 438 Mich 463 (1991)]

V. Codes & Other Statutory Powers

Warrant & Inspection Authority

PUBLIC HEALTH CODE

- (1) To assure compliance with laws enforced by the department, the department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premises, place, person, record, vehicle, incident, or event. (MCL 333.2241)
- (2) The department may apply for an inspection or investigation warrant under section 2242 to carry out this section. (Public Health Code, MCL 333.2241)

V. Codes & Other Statutory Powers

Warrant & Inspection Authority

FIRE CODE

Fire and law enforcement officers can inspect and in some instances impound vehicles transporting hazardous waste, MCL 29.5(a), and the State Fire Marshall can enter "without restraint or liability for trespass" a building to inquire into the cause of fires. MCL 29.6. (although if not immediately after fire, courts will likely imply a warrant requirement). If fire-crime connection, can issue subpoenas and put people under oath.

V. Codes & Other Statutory Powers

Arrest & Detention Authority
Conventional Law Enforcement Authorities:

Peace officers may arrest/detain a person without a warrant for a variety of reasons including:

Probable cause to believe a person has committed a felony or the person has committed a crime, including a minor crime in the peace officer's presence. (MCL 764.15)

If there is a need to detain, ask: Has some crime, however minor, been committed in the presence of a peace officer?

V. Codes & Other Statutory Powers

Arrest & Detention Authority

(1) To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. (Public Health Code, MCL 333.5207)

V. Codes & Other Statutory Powers

Arrest & Detention Authority cont'd

(1) An individual who appears to be incapacitated (as a result of the use of alcohol) in a public place shall be taken into protective custody by a law enforcement officer and taken to an approved service program, or to an emergency medical service, . . .

(2) A law enforcement officer may take an individual into protective custody with that kind and degree of force which would be lawful were the officer effecting an arrest for a misdemeanor without a warrant. (Public Health Code, MCL 333.6501)

Arrest & Detention Authority cont'd

If emergency medical services personnel, exercising professional judgment, determine that the individual's condition makes the individual incapable of competently objecting to treatment or transportation, emergency medical services may provide treatment or transportation despite the individual's objection unless the objection is expressly based on the individual's religious beliefs.
MCL 333.20969

These statutes typically provide for the exercise of some small-scale emergency powers, usually in response to "imminent" dangers or threats:

Public Health Code

(1) Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order The order shall incorporate the director's findings and require immediate action necessary to avoid, correct, or remove the imminent danger.
MCL 333.2251

Environmental Statutes

(1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release [of a hazardous substance], the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat. (NREPA, MCL 324.20119)

Fire Code

Firefighters, in response to determination that dangerous condition exists "may take all necessary steps and prescribe all necessary restrictions and requirements to protect persons and property until the dangerous condition is abated." MCL 29.7(a).

V. Codes & Other Statutory Powers

**These statutes permit the
issuance of orders and
quarantines:**

Public Health Code

If the director determines that control of an epidemic is necessary to protect the public health, the director, by emergency order, may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code. (MCL 333.2253)

V. Codes & Other Statutory Powers

Animal Industry Act

Sec. 12. (1) The director [of the Department of Agriculture] may issue a quarantine on animals, equipment, vehicles, structures, premises, or any area in the state, including the entire state if necessary, for the purpose of controlling or preventing the spread of a known or suspected infectious, contagious, or toxicological disease.
(Animal Industry Act, MCL 287.712)



V. Codes & Other Statutory Powers

Orders and Quarantines

FEDERAL LAW

- Federal role in public health is limited generally to:
 - Prevent arrival of disease from other countries
 - Prevent movement of diseases between states
 - Assist states, or take over if state insufficient
- Citations: 42 U.S.C. 264 (peacetime)
 - 42 U.S.C. 266 (war time)
 - 42 U.S.C. 243 (feds can assist states)
 - 42 U.S.C. 5121 (FEMA can act)
 - 42 C.F.R. 70.2 (2002) CDC can act if local efforts "insufficient"

V. Codes & Other Statutory Powers

Orders and Quarantines cont

EXECUTIVE ORDER 13295

- Under 42 USC 264, quarantinable diseases are identified by the President
- Current executive order is 13295 of April 4, 2003, which lists one new disease (SARS) and 7 that have been on the list since 1983. Those are cholera, diphtheria, infectious TB, plague, smallpox & viral hemorrhagic fever
- Case law is old and scarce, but Courts show great deference to judgment of public health officials

V. Codes & Other Statutory Powers: Liability

B. Not surprisingly, some of these same statutes are also the sources of some very specific liability protections. Thus, in the Public Health Code in Michigan, and in most jurisdictions, you will find provisions that provide immunity to emergency medical personnel for their acts or omissions:

V. Codes & Other Statutory Powers

Public Health Code



Immunity to Emergency Medical Personnel

(1) Unless an act or omission is the result of gross negligence or willful misconduct, the acts or omissions of a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, . . . do not impose liability in the treatment of a patient on those individuals . . .MCL 333.20965

V. Codes & Other Statutory Powers

Emergency Medical Care and Mass Immunization Act:

Provides other protections, including those related to the rendering of cardiopulmonary resuscitation, the use of defibrillators, and other emergency care:

[A]n individual who having no duty to do so in good faith voluntarily renders cardiopulmonary resuscitation [or emergency services to another individual using an automated external defibrillator] to another individual is not liable in a civil action for damages resulting from an act or omission in rendering the cardiopulmonary resuscitation MCL 691.1504

V. Codes & Other Statutory Powers

Emergency Medical Care(cont'd):MCL 691.1502

Medical responder who, in good faith, responds to a life threatening emergency or responds to a request for emergency assistance within a hospital is not liable for civil damages as a result of an act or omission in the rendering of emergency care.



V. Codes & Other Statutory Powers

Hazardous spills and substances

Similar protections exist for those involved in emergency responses to spills or discharges of hazardous substances.

(d) Rendering care or advice

(1) In general

Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP) or at the direction of an on-scene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof...

V. Codes & Other Statutory Powers

Hazardous spills and substances
cont'd

(2) State and local governments

No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. . . .(42 USC § 107(d), CERCLA)

Governmental Immunity Acts

C. Finally, virtually every state as well as the federal government has a general Governmental Liability Statute, which provides broad protection from liability to government agencies and employees when they are engaged in the routine activities that governments traditionally perform.

V. Codes & Other Statutory Powers

Governmental Liability
Statute:Protection for Agencies

(1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.
MCL 691.1407 (1)

V. Codes & Other Statutory Powers

Governmental Liability Statute:
Protection for employees

(2) [W]ithout regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency,

. . . is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, . . . if all of the following are met:

V. Codes & Other Statutory Powers

Governmental Liability Statute
cont'd

(Individuals immune if all of the following are met):

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

V. Codes & Other Statutory Powers

Governmental Liability Statute
cont'd

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. MCL 691.1407

VI. Common Law Powers and Tort Liability

The "common law" represents that body of fundamental "common sense" principles and notions relating to the conduct of the government and the security of persons and property that doesn't rely on the legislature or court precedent for its validity. These are the rules that developed simply because of the way people behaved and the customs and usages that developed over time.

VI. Common Law Powers and Tort Liability

In the emergency response context, Privilege actually contemplates both of the notions that we have been discussing, i.e., authority and liability. Generally speaking, if you are privileged to take a particular action, you are also protected from liability for that action.

What follows is a description of a few general principles that may or may not apply in every jurisdiction, but, some notion of privilege survives in every state's Tort law we'll touch on it so you are familiar with the concept.

VI. Common Law Powers and Tort Liability

Privilege

(1) The word "privilege" is used throughout the Restatement (2nd of Torts) of this Subject to denote the fact that conduct which, under ordinary circumstances, would subject the actor to liability, under particular circumstances does not subject him to such liability.

(2) A privilege may be based upon

(a) the consent of the other affected by the actor's conduct, or

VI. Common Law Powers and Tort Liability

Privilege *cont'd*

(b) the fact that its exercise is necessary for the protection of some interest of the actor or of the public which is of such importance as to justify the harm caused or threatened by its exercise, or

(c) the fact that the actor is performing a function for the proper performance of which freedom of action is essential. (Restat 2d of Torts § 10)

VI. Common Law Powers and Tort Liability

Privilege *cont'd*

The law of torts is full of privileges that, depending of the circumstances, may allow:

1. The use of reasonable force to arrest and confine another to:

a. prevent him from committing a breach of the peace or affray;

VI. Common Law Powers and Tort Liability

Privilege *cont'd*

Affray or similar breach of peace

Either a peace officer or a private person is privileged to use force against another or to impose confinement upon him for the purpose of terminating or preventing the renewal of an affray or an equally serious breach of the peace which is being or has been committed in the actor's presence or of preventing such other from participating therein

VI. Common Law Powers and Tort Liability

Privilege *cont'd*

1. The use of reasonable force to arrest and confine another to:

b. suppress a riot (Restat 2d of Torts, §142);

c. prevent a mentally incompetent person from injuring himself, a third person or causing serious harm to land (under certain circumstances)

VI. Common Law Powers and Tort Liability

Privilege *cont'd*

Subject to the conditions stated in §§ 127-132, a private person is privileged to arrest another without a warrant . . .

(c) if the other is mentally incompetent and the actor reasonably suspects that the other is about to commit an act likely to cause death or serious bodily harm to himself, to the actor, or to some other person, or serious harm to land or chattels, and the arrest is made for the purpose of securing the commitment of the other. (Restat 2d of Torts, § 120)

VI. Common Law Powers and Tort Liability

Entry on the Land and Dwelling of another to:

A. Avert an imminent public disaster if the actor reasonably believes it to be necessary;

One is privileged to enter land in the possession of another if it is, or if the actor reasonably believes it to be, necessary for the purpose of averting an imminent public disaster.

VI. Common Law Powers and Tort Liability

Entry on the Land
and Dwelling of another to:

Comment: . . .

The privilege here stated carries with it the privilege to tear down or destroy buildings, or to remove explosives or other dangerous articles therefrom, or to alter the surface of the soil as by digging ditches, erecting or removing a levee, or doing any other acts on the premises reasonably necessary to effectuate the purpose for which the privilege exists. (Restat 2d of Tort, § 196)

VI. Common Law Powers and Tort Liability

Entry on the Land
and Dwelling of another to:

B. if a public official, abate a public nuisance;

A public officer who by virtue of his office or by statute is authorized to abate a public nuisance, is privileged, at a reasonable time and in a reasonable manner, to enter land in the possession of another for the purpose of abating such a nuisance. (Restat 2d of Torts, § 202)

Summary & Conclusion

Already a substantial body of law authorizing wide range of lawful response-activities.

Similarly broad legal scheme providing liability protection.

Talk about these issues with first responders & with legal counsel and local prosecutors. Play the "what if" game.

THANK YOU



Michael Leffler
Senior Deputy Director,
Consumer Protection Bureau
Lefflerm@michigan.gov



Department of
Attorney General

Federal Law of Quarantine: Law, Example, Problems

Richard Murray, Ass't U.S. Attorney
Lansing, Michigan
December 14, 2004

Overview

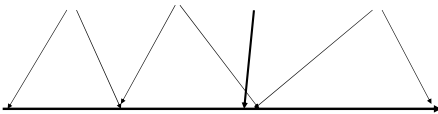
- Basic vocabulary of disease
- For contagious diseases, don't be surprised if...
- Compare some laws
- Tell story
- Common problems

Types of events

	Natural	Deliberate
Contagious	SARS	None yet
Non Contagious	Natural food poisoning	Anthrax, sarin gas

Timeline for contagious disease

Stages of some contagious diseases
exposure, incubation, infectious, symptomatic



If contagious, don't be surprised if:

- There are two waves of disease
- Apparent victims are NOT taken to the hospital
Apparently well people have to stay home
Caregivers wear scary protective gear

How scary?



Law: Federal

- Suspicion of listed disease
- Interstate or foreign travel
- Centers for Disease Control can order quarantine
- Local law enforcement can assist
- person quarantined can seek relief via writ of habeas corpus

Law: Michigan

- Suspicion of listed disease/unusual outbreak
- Individual carrier believed to disobey or ignore health dept. warning="health threat"
- Health dept. can file petition & aff. w/o prior hearing = court order for 72 hrs detention; law enforcement can enforce
- w/prior hearing = ct order 5 days
- w/2nd hrg. & review panel = ct order 6 mos.

Compare new IL law

- Health dept. identify dangerously contagious disease
- order person **or group** quarantined 48 hrs
- law enforcement can back up health dept.
- Health dept. file petition w/court w/in 48 hrs unless exigent circumstances prevent

Measles story

- Few members of unvaccinated group visiting India contracted measles, contacted home doctor, told to stay through incubation
- Came home anyway, arriving Friday: Delhi=>Amsterdam=>Detroit=>Iowa
- Iowa Dr. hears Sat., visits, measles rash

Measles story, p. 2

- measles infectious, can be serious, ideally find & give vaccine w/in 72 hours
- Iowa public health seeks airline passenger list Sat, told wait for airline lawyers on Mon
- IA contacts CDC immunization office, not helpful
- IA notifies Mich public health Sun., Mich health dept order yields passenger list Sun.

Measles story, p. 3

- 30+ states have to be contacted based on Michigan passenger list
- Meanwhile IA public health tells IA sheriff, who knows IA judge, who issues subpoena to airline airport staff who turn over list Sun
- Detroit paper contacted, all passengers in one terminal on Fri should call health dept.
- outcome: one airline case found

Some lessons fm measles event

- Helps if patients follow directions
- Need ability to communicate on weekends
- Know who to call in big organizations
- Private companies have crucial information, and require legal process
- Media can be part of problem or part of solution

Other problems

- an attacker may have picked disease(s) that defy/complicate diagnosis & treatment
- outbreak may be subtle at the beginning
- publicity has substantial economic penalty; some will favor waiting for clearcut results
- if quarantine challenged, how will counsel or court handle public hearing for person barred from public areas

Conclusion

- Past attacks show difficulties of attacker
- If ever face an effective attack, have to mesh victims, medical caregivers, EMTs, public health, law enforcement, private companies, courts, media and public to execute a single effective plan quickly, calmly, and with some personal risk on the very first try
- Not an easy task ...

Modern Public Health & Infectious Disease Information for Legal Counsel & Court Personnel

Ms. Corinne Miller, Ph.D., D.D.S.
Director, Epidemiological Services Division
Acting Director, Bureau of Epidemiology
Michigan Department of Community Health
(517) 335-9166 Phone
MillerCori@michigan.gov

Public Health Emergencies

Linda L. Chezem, J.D.

From the Streets to the Courts



Where and What Is the Emergency?



- ❑ Many Questions
- ❑ FEW clear answers before the fact
- ❑ Hence, the responsibility to prepare process for when emergency occurs
 - Jurisdictional Questions
 - Response Ability



Federal or State and Local

- ❑ Terrorism
- ❑ Large disaster
- ❑ Declared disaster
- ❑ Natural Outbreak
- ❑ Criminal act not recognized as terror
- ❑ Event not reported to federal



Ethical Response Ability

- ❑ “The failure (or refusal) of a leader to to foresee may be viewed as an ethical failure”
- ❑ This ethical requirement is two fold:
 - Foresee what needs to be done
 - Engage in adequate planning and secure needed resources to respond to the public health emergency



Local Trial Courts: First Responders for Justice System



- ❑ A framework for preparedness
 - Delineate the judicial role in emergencies
 - Focus on maintaining the trust of the public
 - Identify demands and create strategies for communications

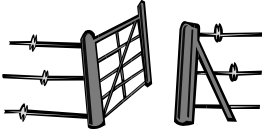


Critical Elements of Preparedness

- | | |
|---|--|
| <ul style="list-style-type: none">❑ Communications❑ Staffing❑ Safe facilities❑ Creating the record | <ul style="list-style-type: none">❑ Education to ensure clear understanding of the law and application of rules of procedure in public health emergency❑ Preparation of needed forms and checklists |
|---|--|



Barriers to the Court's Preparation



- ❑ How to comply with the Judicial Code of Conduct
- ❑ Lack of Urgency belies Importance
 - What is in your face gets dealt with first.
 - Squeaking wheel gets grease; no public demand that judges prepare



The Judicial Conduct:

Considering Integrity and Independence (as well as Appearances) in the relationships with other public officials in the planning process

Ensuring court proceedings are conducted pursuant to the rules and the law

Ensuring that the decision making is not swayed by panic nor public outcry



Judicial Emergency Communications

- ❑ A Written Communications Plan
 - Protocol within the courts
 - With Litigants
 - With Press
 - With non party Government agencies



Rumors Spread Fear



- Court Responses
 - Calm
 - Pursuant to protocol
- Notice of hearings
 - Service
 - Public Notice
- Wording of orders
 - Precise
 - In plain language



Lack of Information

- What do you say when you do not know what to say?
- Clerk and court staff should be able to refer inquiries to the spokesperson.



Planning- Takes More Than Luck



Public Health Law Bench Book

AKA/the Judges' Cliff Notes



What Is a Bench Book?

- What is available in the U. S.?
 - Michigan has some excellent examples.
- What are other countries providing?
- How does one go about compiling a bench book?
- What should be in a bench book?



Federal Judicial Center

- **Benchbook for U.S. District court judges, fourth edition (revised March 2000)**
2000, 244 pages

an ongoing compilation of information that federal district judges have found useful for immediate bench or chambers reference. The Benchbook contains sections on such topics as assignment of counsel, taking guilty pleas, model sentencing forms, standard voir dire questions, and oaths. It is prepared under the guidance of experienced district judges and is produced in loose-leaf format for easy supplementation. This is a March 2000 revision of the 1996 fourth



Florida

- ❑ The conference of county court judges of Florida education committee developed a criminal bench book to aid the trial judge in basic procedures and techniques and to serve as a tool in the courtroom.
- ❑ Each chapter contains
 - "Key points" section sets forth the basic substantive and procedural law applicable to the chapter's topic,
 - "Authorities" section lists all relevant criminal rules, Florida statutes and case law,
 - "Tips/notes" section contains helpful procedures,
 - "Checklists/forms" section contains all checklists, forms and colloquies for the judge's ready use.



Texas

- ❑ Texas municipal courts education center has developed an criminal bench book process.
- ❑ Extensive checklists that have been adapted from judicial experience.



Connecticut

- ❑ Experimented with text-searchable, electronic versions of manual and statute materials for superior court judges' use on their laptops during trial.
- ❑ Juvenile and family areas; and criminal law.



Around the World

- ❑ Bench books are used with frequency
- ❑ Well articulated purposes for the bench books.
- ❑ We can learn from them although they do NOT treat public health issues



Great Britain

- ❑ The Judicial Studies Board compiles Bench Books
- ❑ "This is not intended as a textbook on the law. It is a guide to the judicial function..."



Additionally,

- ❑ It is hoped that this Bench Book will be regularly updated.
- ❑ Much of what you will find in this Bench Book does not have statutory or other authoritative force. It is the distillation of practitioners' experience offered in the form of hopefully helpful hints. It certainly is not there to curb or direct the wide statutory discretions given by the legislation; it is offered, especially in the earlier sections, as suggested issues and questions that judges might find it helpful to ask themselves.



Judicial Commission of New South Wales

- The Commission publishes Bench Books in each jurisdiction which contain a wealth of practical information intended to assist a judge or magistrate. Bench Books are essentially working aids provided for judicial officers, specially tailored to the needs of each jurisdiction. They include:

- Criminal Trial Courts Bench Book
- Land and Environment Court Bench Book
- Industrial Relations Commission Bench Book
- Local Courts Bench Book



Australia

- CENTRE FOR JUDICIAL STUDIES

- "Bench books, when well researched and written, are likely to become the most useful element of any tribunal's program of continuing professional development. This is certainly the case with courts both here in Australia and around the common law world. They are likely to become a significant tool in building the professional capacity of your tribunal(s)."

- Livingston Armytage (LLM Hons:1) is Director of the Centre for Judicial Studies.



Cambodia

- **OBJECTIVE:**

- This bench book will be produced for judges and prosecutors of the Provincial Courts of Cambodia by the Cambodian Court Training Project. The purpose of the bench book or manual is to assist judges and prosecutors to perform their professional duties by providing a useful practical reference to important law and court procedure which they may require. The bench book will consist of brief summaries of selected laws and procedures, checklists, guidelines to accepted practice and references to cases, circulars and commentaries .



Other Examples

- ❑ CANADA
- ❑ SINGAPORE
- ❑ PHILLIPINES



Michigan

- ❑ **Domestic Violence Benchbook: A Guide to Civil and Criminal Proceedings, 3rd Edition**(Approx. 678 pages; © 2004) Available in pdf format for viewing or downloading.



My Personal Favorite

- ❑ **Tribal healing to wellness courts: the judge's bench book** (2002 draft) under auspices of the tribal law and policy institute
- ❑ **For every difficult and demanding journey, one must have a leader. In a healing to wellness court that person is the judge.**
- ❑ This bench book is designed to provide instruction and practical tools to judges in their efforts to guide those traveling on the road to wellness. This bench book is also useful for wellness court team members and community leaders who are interested in designing, creating and implementing a wellness court program. On the following pages the reader will find useful policies and examples of court procedures for healing to wellness courts. However, this bench book is only a general resource.
The success of your wellness court will flow from good leadership, teamwork, and from the efforts of the participants themselves



Challenges

- ❑ Large amount of law and literature to review
- ❑ No discernable focus on public health preparedness in existing bench books
- ❑ Existing forms are out of date or untested
- ❑ No checklists that are on point
- ❑ Basic finding: procedural vacuum
- ❑ Court Communication and Attitudes



Indiana Contents

- ❑ Introduction to public health for judges (primer)
 - ❑ Review of the State Constitution
 - ❑ Outline of jurisdictional determinates
 - ❑ Applicable rules of court
 - ❑ Substantive statutes
 - ❑ Checklists and model orders
 - ❑ Glossary
- ❑ A second or next step is the adaptation of existing court communications plans.



Venue and Jurisdiction

- ❑ Where?
- ❑ Jurisdiction is more difficult to determine.
 - Sensitive because judicial acts without jurisdiction give rise to personal liability under 1983 actions
 - Public health orders are civil matters
 - ❑ Each state defines the jurisdiction of the courts by constitution and /or statute.
 - ❑ The Michigan Supreme Court has also appointed a judge for each judicial region to be available during any **declared** emergency.



First Questions

- ❑ What procedural rules and safeguards to apply?
 - Time frames
 - Appointment of counsel
 - What rights
- ❑ Standard of proof
 - Beyond reasonable doubt
 - Clear and convincing
 - Preponderance



Cross Cutting Statutes

- ❑ Public Health Code
- ❑ Criminal Code
- ❑ Local and County Government Code
- ❑ Code Provisions for non Constitutional Courts
- ❑ County and local ordinances



Court Rules

- ❑ Procedure
 - Preferred Venue
 - Time and notice requirements
 - Rules trump statute as to procedure
- ❑ Evidence
- ❑ Appellate Procedure



For Instance,

Admissibility of Evidence: How Do You Prove the Danger of a Newly Emerging Disease?

Objectives :

- ❑ Review rules of evidence
- ❑ Clarify the judicial role as gatekeeper
- ❑ Recognize the most frequent errors in qualifying witnesses



The Expert's Testimony

- ❑ An erroneous ruling based on the Expert's testimony
 - AT Risk: public health
 - AT Risk: individual rights



Rule 702

Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,



702 Cont

- a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise[,]
- If (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.



Rule 703

- The facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence. This rule does not restrict the discretion of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence hereafter.



704: Opinion on Ultimate Issue

- ❑ Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.



US Case Law

Frye v. United States,

54 App. D.C. 46, 293 F. 1013 (D.C. Cir. 1923)

The proffered evidence is generally accepted in the relevant scientific community



Daubert V. Merrell Dow

509 U.S. 579, 125 L. Ed. 2d 469,
113 S. Ct. 2786 (1993)

The Court is the gate keeper.
Deference to trial court discretion.



Not a Checklist
nor Formalistic Approach :

- whether the theory or technique can be or has been tested,
- has been subjected to peer review or publication,



Continued

- has a known rate of error and standards governing the technique's operation,
- and could also include a consideration of whether the theory or technique has gained general acceptance in the relevant scientific field.



General Elec. Co. V. Joiner,

522 U.S. 136 (1997).

The standard of appellate review of the trial court's rulings on admissibility is abuse of discretion.

-Must have reasonable relationship to the case at hand. Court frowns on great leaps of logic



Kumho Tire Co. V. Carmichael,

526 U.S. 137, 143 L. Ed. 2d 238, 119 S. Ct. 1167 (1999)

Daubert applies not only to scientific evidence, but also applies to "technical, or other specialized knowledge" listed in Rule 702.



What Qualifies an Expert As an Expert?

The Expert Has Knowledge,
Skill, Experience, Training, or
Education That Is Beyond the
Common.

Simple Checklist

- ❑ Education and Specialized Training
- ❑ Licenses and Certifications
- ❑ Time in Field (Experience)
- ❑ Publications
- ❑ Professional Organizations
- ❑ Previous Expert Testimony



Publications

- Which ones?
 - Peer reviewed
 - Reputation
- So What?
- What do they say?
- Can you tell if the science is good?



Expert Testimony



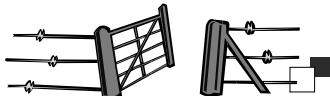
- Court is the gatekeeper



- Federal and state case law must be taken in account

- TR 701 defines opinion testimony that requires that expert to testify

- Science must be validated



Small Group

- Review handouts of vita and testimony
- Which vitas qualify the witness as an expert?
- What subject matter area?
- Do not forget the rest of the rules of evidence



Conclusions

- ❑ We are plowing new ground
- ❑ Looking around the world, we did not find a model public health bench book





Emergency Response Training

Preparing Courts for a
Public Health Emergency

December 14, 2004

Hon. Wendy Baxter
3rd Circuit Court
Detroit

Mr. Dan Voss
Management Analyst
State Court Admin Office

Keeping the Courts Open

- Are Michigan Courts Facilities Prepared for a Public Health Emergency?

Hon. Wendy Baxter
3rd Circuit Court
Detroit

What You Can Do

- Before an Emergency
- During an Emergency
- After an Emergency

BEFORE

- Develop and Know the Protocol
- Back up/Redundant Systems
- Plan for Prisoners
- Rehearsals
- Detection Equipment/ Methods

DURING

- Keep in Touch
- Voice of the Chief Judge
- Nextel, portable radio & TV
- Public Address System

AFTER

- MEDICAL/SCIENCE ADVISOR

Dan Voss
Management Analyst
State Court Administrative Office

Issues

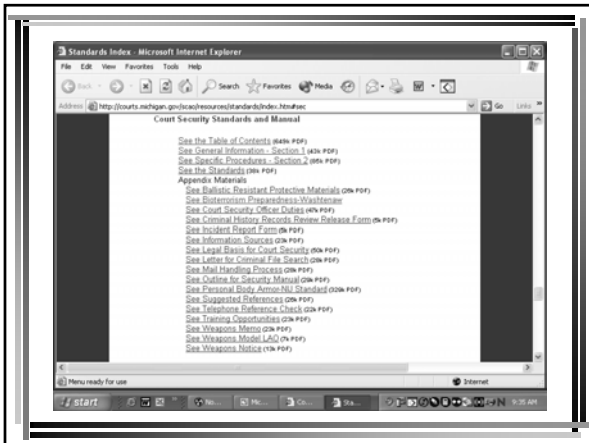
- Resources
- Planning
- Training
- Communication
- Collaboration

Resources

- Michigan Court Security Manual
- 2002 PA 132
- MSP Homeland Security Advisory System
- U.S. Department of Homeland Security
- Security Design

Michigan Court Security Manual

- <http://courts.michigan.gov/scao/resources/standards/index.htm#sec>
- Planned prior to September 11 attacks
- Provided hard copy to every court in state
- Video conference training for all court security coordinators-March 2002
- Includes resources:
 - Bioterrorism Preparedness-Washtenaw
 - Mail Handling Procedures



2002 PA 132

- MCL 30.410(1)(a)
- Judicial branch of the state included as a department of state government for purposes of emergency management coordination
- Provides that local courts are to be included in the development of emergency operations plans and programs

Security Design

- SCAO Facility Standards
 - <http://courts.michigan.gov/scao/services/tcs/sec.htm>
- ASLA Security Design Symposium Abstract
 - <http://www.asla.org/abstracts/index.html>

MSP Homeland Security Advisory System

- Homeland Security FAQ's
- Links to Emergency Management Division
- Terrorism Preparedness FAQ's
- http://www.michigan.gov/msp/1,1607,7-123-1593_3507_8920---,00.html



U.S. Dept. of Homeland Security

- Ready.gov
- U.S. government web site for homeland security readiness
- <http://www.ready.gov/>



Planning

- See Section 1 of the Court Security Manual

General Emergency Planning

- Purpose
- Scope
- Concept of Operations
- Definitions
 - Emergency
 - Emergency Response Team
 - Command Center
- Command, Control, & Communications
 - For All Emergencies

General Emergency Planning – cont'd

- Plan Exercise
 - Desk Exercise
- Training
- Emergency Response Team Member I.D.
- Evacuation
- Accommodation of Physically Handicapped
 - Mobility Impairments
 - Visual Impairments
 - Hearing/speech Impairments

Training

- Coordinate training with your local emergency management officials
 - Determine current knowledge and applicable certifications
 - Conduct team meetings and refresher sessions
 - Provide annual training opportunities

Communication

- Develop a communications plan as part of your emergency plan
- Ensure that all staff members know the communication plan
- Distribute telephone numbers and other contact information to key staff

Collaboration

- Key to an effective response
- Common goal: public safety
- Establish relationships prior to an emergency
- Regular communication and discussion produces understanding of importance of working together

Questions

- Hon. Wendy Baxter
3rd Circuit Court
313-224-5261
Wendy.BAXTER@3cc.co.wayne.mi.us
- Dan Voss
Management Analyst
517-373-2106
vossd@courts.mi.gov
